

**BEFORE THE
FEDERAL COMMUNICATIONS Commission
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of)	RM-10586
Fixed And Mobile Broadband Access, Educational)	
and Other Advanced Services in the 2150-2162 and)	
2500-2690 MHz Bands)	
)	
Part 1 of the Commission's Rules – Further)	WT Docket No. 03-
67		
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-
217		
Multipoint Distribution Service and the)	
Instructional Television Fixed Service to Engage)	
in Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74 of the)	WT Docket No. 02-68
Commission's Rules With Regard to Licensing)	RM-9718
in the Multipoint Distribution Service and in the)	
Instructional Television Fixed Service for)	
the Gulf of Mexico)	
)	

CONSOLIDATED REPLY TO PETITION FOR RECONSIDERATION

Digital Broadcast Corporation (“DBC”), pursuant to Section 1.429(g) of the Federal Communications Commission’s (“Commission”) rules, hereby submits its Consolidated Reply to certain of the Oppositions to the Petitions for Reconsideration (“Oppositions”) to the *Report and Order and Further Notice of Proposed Rulemaking* (“Order”)¹ in the above-referenced proceeding.

¹ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (July 29, 2004). A synopsis of the Order was published in the Federal Register on December 10, 2004. 69 Fed. Reg. 72020.

I. EBS Leases Should Not Be Limited to 15 Years

DBC is in agreement with those Oppositions that fully support the Commission's decision to provide EBS licensees with the ability to negotiate leases according to their own needs by following the rules and policies adopted in the *Secondary Markets* proceeding, especially the elimination of the overly restrictive requirement that EBS lease terms be limited to 15 years.² DBC is actively working on rolling out a nationwide digital video service. As the Commission is aware, there are often approximately five EBS licensees *in each market* with whom DBC must negotiate, as its business plan is based on acquiring at the very least use of all of the Mid-Band Segment channels to deploy its video services. Negotiating such leases the first time is onerous and time-consuming enough, but requiring them to re-negotiate such leases again in only 15 years affects its ability to focus its resources on providing services, as well as hinders investors from financing its operations due to the uncertainty of whether DBC will still have the licenses necessary to operate at the end of that 15 year period. If DBC and an EBS licensee determine that a 15 year lease is sufficient for both parties' needs, that should be satisfactory to the Commission and further regulatory

² See Oppositions of Wireless Cable Association International, Inc. ("WCAI") at 30-34; Sprint Corporation ("Sprint") at 5-7; Nextel Communications ("Nextel") at 14-20; BellSouth Corporation ("BellSouth") at 10-12; and Luxon Wireless, Inc. ("Luxon") at 5-6.

restrictions should not be implemented as such restrictions could only be viewed as arbitrary. .

II. EBS Programming Requirements Should not be Increased

For the reasons very clearly stated in the WCAI's Opposition³, the programming requirements as embodied in the current rules should not be increased. This is an issue that was very thoroughly deliberated by the Commission and which the industry has commented on throughout various proceedings, including this one, and should not be revisited.

III. An Option to Purchase Equipment Upon Termination of an EBS Lease Should Not Be Mandated

DBC is also in agreement that mandating all EBS excess capacity leases to contain a provision by which the EBS licensee may purchase the current or similar transmitting equipment at fair market value to be an antiquated requirement.⁴ When EBS channels were used primarily for the provision of analog video transmissions, this could have been considered a reasonable request as transmitting equipment was specifically allocated to a particular channel or channel group. Relinquishing equipment under those circumstances did not impose a great hardship on the operator.

However, such a provision could cause great issues for an operator such as DBC. DBC is using unique digital equipment developed by Scopus Technologies Network, Inc. ("Scopus"). DBC has an exclusive license with Scopus to utilize and market its digital equipment in the United States of

³ See WCAI at 37-41; *see also* Sprint at 7-9; Nextel at 26; BellSouth at 8-9; and Luxon at 3-4.

⁴ See WCAI at 32.

America. It could be argued that an FCC mandate that DBC provide the same or similar equipment to an EBS licensee could be considered an infringement of its licensing rights, as DBC is not aware of specific equipment that could be deemed as “similar” or “comparable” in order to fulfill this requirement. What is considered similar or comparable would be subject to interpretation by the parties, who would most likely differ in opinion upon termination of a lease. Furthermore, requiring DBC to sell or provide equipment to an EBS licensee upon termination of a lease is not realistic, as the school is unlikely to be able to afford to purchase such equipment that costs approximately \$350,000 per channel nor is it likely that the school would want to continue to use such highly advanced equipment on its own with the assistance of DBC.

Rather than requiring that such equipment be provided, it should be left to the parties to negotiate what each parties’ obligations will be in the event of termination of a lease.

CONCLUSION

As pointed out by various petitioners, a majority of EBS licensees are schools that have agendas that are localized and specific to their particular organization. The Commission should not attempt to second guess those priorities. Only an EBS licensee can determine what leasing arrangement will best fulfill its needs. The Commission recognized this when it adopted application of the *Secondary Markets* rules to EBS licenses and should not

reconsider this decision as it was the correct choice to accommodate the variety of EBS licensees that are affected by such regulation.

DIGITAL BROADCAST CORPORATION

By /s/ Gary Nerlinger
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